IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 30725 of 2007(G)

OPSUC.13/2003 of PRINCIPAL SUB COURT,KOLLAM

PETITIONER:

R.SIVASANKARA PILLAI,
THANKAPRABHA, PUNNATHALA, THIRUMULLAVARAM P.O.,
KOLLAM-12.

BY ADV. SRI.T.M.CHANDRAN,
SRI.V.A.SASIDHARAN,
SRI.JOSEPH ALBIN NEDUNTHALLY.

RESPONDENTS:

1. **R.NEELAKANTA PILLAI,**
   ANAKOTTU VAZHUVELIL, KONNAMANKARA MURI,
   ADOOR (PO).

2. **R.GOVINDA PILLAI, GEETHA BHAVAN,**
   KUNNATHUR WEST, KUNNATHUR EAST (PO).

3. **LEKSHMIKUTTY PILLAI THANKACHI,**
   VAISAKH, ARALUMOODU PO, NEYYATTINKARA.

4. **P.GOURIKUTTY PILLAI THANKACHI,**
   GEETHAS, JYOTHI NAGAR, KESAVADASAPURAM,
   THIRUVANANTHAPURAM.

5. **R.UNNIKRISHNA PILLAI,**
   ANAKOTTU VAZHUVELIL, KONNAMANKARA MURI,
   ADOOR PO.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.30725 OF 2007

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Dated this the 26th day of October 2007

JUDGMENT

This writ petition is preferred against the order of the Prl.Sub Court, Kollam in I.A.No.3718/2007 in O.P.(Suc.)13/2003 whereby he did not permit the document to be sent for an expert's opinion. The original petition is one for issuance of a succession certificate and a codicil is produced and now it is contended by the petitioner herein that it is not a forged document and it can be proved by comparing the signature of the person. The court below found that a considered order was passed earlier in I.A.No.91 of 2004 and that has attained finality and it further observed that the petitioner can file an application for comparison of the signature by the court as provided under Section 73 of the Indian Evidence Act. Learned counsel for the petitioner submits that substantial injustice will be done if the permission to compare the signature by an expert is not granted. At the outset, it is a rudimentary principle that when a person claims right over the property by virtue of a codicil, the burden of proof is on him to prove the same. Similarly, if there are surrounding suspicious circumstances, it is his

duty to remove the shroud of suspension. So a person who wants to rely on a Will has to prove to the hilt about its acceptability before a court of law. At this juncture it is pertinent to refer to Section 373 of the Indian Succession Act. When a more complicated or vexed question of fact and law is involved in a case coming under Section 372 of th Act, then the Act prescribes a mode of determination, i.e. by permitting the person to have the succession certificate who is having a better prima facie case and leaving the matter wide open for a decision in a considered civil suit. So the scope of enquiry contemplated under the provisions of the Indian Succession Act lies in a narrow compass and therefore one cannot convert a succession O.P.into a title suit. Further, this is a case where a similar application was moved as I.A.No.91 of 2004 and that was disposed of by the court on 11.6.2004 and the court held that there is no necessity to send the codicil for expert opinion at that stage. Subsequently, I.A.No.762/2007 was filed and an order has been passed. It is a settled principle that even the orders in a pending proceeding in an interlocutory stage will govern the principles of res judicata and since the petitioner has not challenged the original order in I.A.No.91/2004, it will also have an adverse impact against the petitioner.

Therefore, I do not propose to interfere with the decision rendered by

the court below. But, I make it very clear that when the court considers the matter, it has to restrict its decision on the basis of Section 373 (3) of the Indian Succession Act and if the court feels that a complete enquiry is necessary, it can refer the party to a civil suit meanwhile issuing a certificate to the party, who is having a prima facie case. In such a situation, interest of the other party has to be protected and therefore in such circumstances, even if a succession certificate is issued on the basis of a prima facie case, the party should be directed to furnish security so that if ultimately the other side is entitled to the relief, his or her interest must be safeguarded.

With these observations, this writ petition is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-